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ABSTRACT

This issue of a newsletter from the American Bar Association emphasizes teaching about crime and punishment. The first article offers an overview of the diversity and common assumptions that underpin the teaching of criminology. Student interest in crime and criminology creates an opportunity for instructors interested in challenging students' reproduction of commonplace but mistaken notions about the role of law in society. By using historical sources and case studies of legal invention, the instructor can make immediately problematic the legal status of an action as criminal. By placing the study of law within a comparative historical context, the instructor can focus on the creation of crime to analyze social structure and power in particular communities and states. Editor's notes include administrative news and a discussion on using active learning strategies in the classroom. This coordinates with the last article which offers a critique and alternative approach to moot court exercises. The second article provides an historical view of punishment practices and social control. The arguement is made that jails and prisons are being used more than ever, but control without confinement has been growing faster. The modernization of social control is marked by four changes: (1) subject of punishment shifted from the body to the soul, (2) regulation of punishment shifted from the community to the society, (3) target of punishment shifted from groups to individual, and (4) objective of punishment shifted from exile to normalization. The third article discusses why and how to incorporate feminist perspectives into the teaching of criminology. (DK)

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FOCUS ON LAW STUDIES

Teaching about Law in the Liberal Arts

Vol. VIII, No. 2 Spring 1993

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FOCUS on Law Studies

Teaching about law in the liberal arts

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Teaching about Crime: Excursions in Law and Social Theory

by Susan S. Silbey

[*Editor's Introduction: This issue contains a special emphasis on teaching about crime and punishment. Susan Silbey (below) offers an overview of the diversity and common assumptions that underpin the teaching of criminology. Jonathan Simon (page 4) provides an historical view of punishment practices and social control. Kathleen Daly (page 5) discusses why and how to incorporate feminist perspectives into the teaching of criminology.*]

Criminology courses are unusually popular across a wide spectrum of students – humanists, scientists, and social scientists. Two contradictions in this student interest in criminology create opportunities for critical thinking and analysis. First, although criminal law makes up a very small portion of the formal body of law in statutes and cases, and an equally small portion of the informal practices of law in organizations and professional commentary, students are often disproportionately attentive to crime as a legal phenomenon. Second, although crime is a thoroughly legal matter, students' interest in the study of crime (criminology) is often fixated on the performance of crime (criminal behavior), and to a lesser degree on the responses to crime (criminal justice and popular culture), rather than in its creation and management through law.

Nonetheless, this strong, and somewhat prurient, attraction to criminology creates an opportunity rather than a handicap for instructors interested in challenging students' reproduction of commonplace but mistaken notions about the role of law in society. The enthusiasm with which students come to criminology provides the energy for inverting unexamined notions about what constitutes crime and its relationship to social organization and social change. By including a consistent metadiscussion on method and theory in criminology, the instructor can develop students' analytic and critical capacities reaching beyond the subject of crime itself to law and social change.

Most criminology textbooks begin with the question of what is crime and proceed to a discussion of the legal definition of crime (e.g., Sutherland and Cressey, *Criminology*, 1978); many texts also include a discussion of sociological understandings of crime as violations of norms (e.g., Barlow, *Introduction to Criminology*, 1993; Conklin, *Criminology*, 1992; Gibbons, *Society, Crime and Criminal Behavior*, 1992; Sykes and Cullen, *Criminology*, 1992). Some self-consciously critical texts present the legal and sociological material while including caveats about the limitations of the categories, often suggesting that crime may be more generally understood as a social harm or injury, or perhaps as a violation of human rights (e.g., Beirne and Messerschmidt, *Criminology*, 1991; Galliher, *Criminology*, 1989; Quinney, *Criminology*, 1979). This conventional practice can, however, be turned to critical inquiry by historicizing the discussion of this threshold question of what is crime.

By using historical sources and case studies of legal invention, the instructor can make immediately problematic the legal status of an action as criminal. Why does a particular form of injury, or a particular violation of group norms, become criminalized, while other behaviors and norm violations do not? To answer this question, it is necessary to place criminalization within a broader context of social control and note that it is merely one form of responding to violations of social norms. Other responses may be entirely informal (e.g., gossip and scandal), or formalized at the level of the family or group (e.g., ostracism, feuding). The violation of norms is not, however, considered crime – a legally circumscribed phenomenon – until there is a state and state law with a monopoly of force over a territory. Once crime is understood as something prohibited and punished by states, produced by state power and enacted in state law, it is useful to observe the variation in the forms of behavior that get assigned to criminal or penal social control rather than one of the other available systems (e.g., conciliatory, therapeutic, compensatory). To cite a classic example, why did traveling on the public roads come to be a crime in 14th century England, and again in some southern states in the U.S. after the Civil War? Or to invoke a more contemporary example, why and how have the use and distribution of some narcotics become criminalized and others not? Why and how have

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FROM THE EDITOR

Focus Expands to Three Times Yearly

After eight years of publication on a twice per-year basis, *Focus* will appear three times annually beginning in the Fall of 1993. Publishing *Focus* on a more frequent basis has been requested many times over the years. We are pleased (finally!) to be able to accommodate this request and provide more regular communication with our diverse readership.

Two articles on human rights, authored by Rhoda Howard and Vinay Lal, and published in the Fall 1992 issue of *Focus*, will be reprinted in a college text, *Taking Sides: Clashing Views on Controversial Issues in Crime and Criminology*, 3rd ed., Dushkin: 1993, edited by Richard C. Monk.

The Fall 1993 issue of *Focus* will be devoted to the many connections between *law and literature*, emphasizing resources and perspectives for teaching undergraduate students. Among the topics to be addressed are the relationships between famous trials and their fictionalized counterparts, true crime literature, and the use of both classical and popular fiction in courses. The articles draw upon our highly successful conference on "Literature, History, Culture and the Courtroom: Intersections," held in Fort Worth, Texas this past February.

The Winter 1994 issue of *Focus* will contain several essays on dispute resolution and ADR, in theory and practice. I would also like to publish two or three short articles (about 500-750 words) on "classroom strategies" for *incorporating* dispute resolution perspectives into such courses as sociology of law, law and society, courts and judicial process, administrative law, and the legal environment of business. Since there are few opportunities to establish courses devoted entirely to the topic of dispute resolution, the most useful approach would seem to be to discuss how a perspective on dispute resolution can enhance existing law-related courses.

If you have some experiences or ideas to share with others, write or call *Focus* Editor John Ryan by September 15 (see back page for mailing address and telephone number).

Utilizing Active Learning Strategies in the Classroom

Active learning strategies are being promoted at higher education conferences and workshops, in research studies, and by faculty themselves who wish to reinvigorate their classes. What, exactly, is active learning and how is it applicable to teaching about law-related issues?

In a recent book, *Active Learning: Creating Excitement in the Classroom* (ASHE-ERIC Higher Education Report No. 1, 1991), Bonwell and Eison define active learning strategies as a set of "instructional activities involving students in doing things and thinking about what they are doing." Among such activities would be discussion, audio-visual presentations, in-class writing, problem-solving, group work, debates, role-playing and simulations, etc. Such strategies have frequently been shown to be more effective in facilitating students' higher-order thinking and writing skills than the lecture method.

At our Fort Worth conference, Dr. Maryellen Weimer engaged in a stimulating and well-received, interactive presentation on active learning, the benefits to students, and how to use such strategies selectively in one's courses. Weimer, who is the Associate Director of the National Center on Postsecondary Teaching, Learning and Assessment at Pennsylvania State University, focused on how to create an effective environment for classroom discussion. She stressed the need for instructors to wait after asking a question, so as to allow students adequate time to formulate responses (in one recent study, instructors waited an average of only 2.3 seconds). Weimer also demonstrated how to cope with problems that arise during discussion.

Law-related courses and topics provide many opportunities to incorporate active student learning strategies. Debates, simulations, moot court exercises (see the article in this issue by Georgia Ulmschneider), and the Socratic method are all examples. Future issues of *Focus* will explore some of these strategies.

Commission Hires New Project Manager

Anthony Star joined the Commission staff this past November as Project Manager. A recent graduate of the University of Chicago in American history, Anthony has a special interest in utilizing computers and other technology to enhance our communication and clearinghouse functions. Among his key responsibilities are coordination of the annual conference and mini-grant program, production of the *Teaching Resource Bulletin* series, and oversight of the syllabus clearinghouse.

FOCUS *on Law Studies*

Teaching about law in the liberal arts

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Focus on Law Studies is published twice yearly by the American Bar Association. It offers a forum for ideas, resources, analysis, and opinions on teaching about law in the liberal arts. Opinions and positions stated in individual articles are those of the authors and not necessarily those of the American Bar Association or the Commission.

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The Law Forum: Student Discussion and Debate about Law-Related Current Events

by Kathleen Dean Moore

Not many examples invented by professors could be as interesting or as astounding as the news that students can read in the morning paper:

- *Milwaukee Murderer/Cannibal Pleads Guilty*
- *Anita Hill v. Clarence Thomas: Someone is Lying*
- *Los Angeles Explodes after Acquittal in Rodney King Case*
- *Oregon Senator Accused of Sexual Harassment*

With a Mini-Grant from the American Bar Association Commission on College and University Nonprofessional Legal Studies, we set about to take advantage of the interest excited by these and other news stories, to teach students about the law. Our project was to organize six Law Forums, each in rapid response to a breaking news story that raised law-related questions in students' minds. Our goal was to bring together students who had questions and guest experts who had answers, to talk about the legal aspects of the news story. We wanted to catch students outside of class, just at the moment when they were most eager to learn, and teach them about the law behind the headlines.

For example, as Los Angelenos swept glass out of their streets after the riots, students on our campus were meeting with a multi-ethnic panel made up of a district court judge, an attorney for the Oregon Department of Justice, and a student who had worked for the Los Angeles Police Department. Students had a chance to ask all of the law-related questions that the acquittal and subsequent riots had raised in their minds: Who decides that a trial will be moved to another location? Why can't judges overturn bad jury decisions? Do you have a jury of your peers, if all the jurors are members of a different racial group? Is looting justified, if the looters have been systematically excluded from economic advancement?

The forums allowed us to bring law-related education to students who were unlikely to enroll in a law class and who had no intention of being lawyers, but who had questions about what was going on and sought information as citizens and as participants in the civic discourse. The students gained two kinds of insights: first, they learned about the law and they were disabused of some common misconceptions about legal practices; and more important, they gained a more questioning, less "knee-jerk," approach to legal news.

It was important that the Law Forums were extra-curricular. We professors tend to think of class time as the prime learning time for students. But this focus often leads us to pass up real opportunities for teaching during the hours students spend outside of class. In fact, students are learning all the time – the moment class is over

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Excusing Murder: Criminal Responsibility and the Insanity Defense

Serial killer Jeffrey Dahmer confessed that he killed and dismembered 15 people in one of the most gruesome murder cases in history. But he should not be punished, he claimed, because he was legally insane at the time of his crimes.

- Can a person get off scot-free by claiming he is insane?
- What is legal insanity anyway?
- Who decides if a criminal is insane?
- How can you distinguish between a murderer who is truly evil and one who is crazy?
- Why is our legal system so reluctant to punish dangerous lunatics who do terrible things?
- How could a defense attorney ever encourage someone like Jeffrey Dahmer to use the insanity defense, knowing that her client could escape punishment if the defense succeeds?

These are some of the questions that students posed to three local experts at an Oregon State University Law Forum on the insanity plea. The students were gathered at the student union on the Saturday morning of Dad's Weekend, and many had brought their fathers. The experts were Pete Sandrock, the Benton County District Attorney; Katherine Wood, a defense attorney; and Dr. Hal Dickman, a clinical psychologist.

In Oregon, Sandrock said, a defendant is sane if he is in control of his behavior and understands the behavior is wrong. But notice, Dr. Dickman added, that 'insanity' is a legal term, not a medical term, and a person can have serious mental disturbances and still be legally sane.

Even violent criminals used to go free in Oregon, Sandrock explained, if their insanity defense was successful. But the law has changed, and now they often spend more time in a state mental institution than they would have spent behind bars. Mental institutions are not the country clubs they are often pictured to be, Wood said, and so defendants now seldom try to use the insanity defense, preferring a shorter term in prison.

"What about battered wives who kill their husbands?" students asked. "Are they temporarily insane? And should we punish them?" "And what about people who commit crimes under the influence of drugs? Are they temporarily insane?" "Are we moving toward a society in which nobody is judged to be evil, but lots of people are 'sick'?" a father wanted to know.

KDM

From Confinement to Waste Management: The Post-Modernization of Social Control

by Jonathan Simon

Ask an American to think of punishment and a prison cell will come to mind. For more than two centuries that picture of solitary individuals behind metal bars and austere stone walls has been an enormously influential model of how to achieve social control in modern society, not just for the felon, but also the insane, the deviant, and the delinquent. Indeed, if a venerable and recently revitalized tradition of scholarship is correct, confinement has been a critical ideological linchpin in the complex of social transformations that constitute our modernity. It would therefore be of enormous interest to social scientists and humanists if confinement is indeed becoming less central to social control in contemporary post-industrial societies.

At a time when incarceration rates in the United States are at unprecedented levels it may seem odd to speak of a shift away from confinement. It is true that we are using our prisons and jails more than ever, but control without confinement (through probation, parole, and the like) has grown faster than imprisonment and accounts for a far larger portion of all individuals under criminal jurisdiction than prisons and jails combined. (Europe is even more tilted in favor of control without confinement.) And confinement of the mentally ill and mentally retarded, once a system comparable in size to the prisons, has been dramatically reduced over the last quarter century.

More importantly, the strategy of maintaining physical control or at least surveillance over specific disreputable individuals is competing against a powerful set of alternative strategies which target whole portions of the population. These strategies are often not identified as control functions at all. They tend to be continuous with work and consumption, and they emphasize prevention more than reaction and categoric segregation rather than individual transformation.

The evidence for, and implications of, this historic shift can only be highlighted here. At the risk of implying a crude evolutionism (O'Malley 1992), I refer for convenience to three regimes: the ancien regime, modernity, postmodernity.

The Modernization of Social Control

Historically, confinement stands in sharpest contrast to the practices of scaffold punishment, ranging from death and dismemberment, to lesser mutilations and humiliations conducted before the public which were the predominant penal practices from the middle ages to the early modern period. There is scholarly controversy over just how abrupt and total this shift really was (for the best review, see Garland 1991). However, there is broad agreement on the most salient differences between confinement and the scaffold, and that by the middle of the 19th century confinement had become the predominant punishment for serious crimes.

We use jails and prisons more than ever, but control without confinement has grown faster.

The subject of punishment shifted from the body to the soul. The ancien regime marked and tormented the body. The modern regime has sought to persuade, deter, uplift or treat the mind of the offender while doing as little damage to the body as possible (Rusche & Kirchheimer 1939; Foucault 1977; Melossi & Pavarini 1978; Ignatieff 1978; Garland 1991).

The regulation of punishment shifted from the community to the society. For a long time punishment was weighted toward the local community. Local notables, employers, and family members played an important role in invoking and mediating the exercise of the power to punish (Rothman 1971; Spierenburg 1984, 1991). Modern punishment has been oriented toward norms defined and enforced on the level of the general society.

The target of punishment shifted from groups to individuals. The ancien regime feared vagabonds, robber bands and dangerous classes. The criminal individual was a modern invention possible only after the growing strength of an industrial working class forced elites to concede their basic humanity and redefine crime as the product of individualized pathological processes (Foucault 1977; Garland 1984).

The objective of punishment shifted from exile to normalization. The practices of the ancien regime tended in one of two directions, elimination for the most serious or persistent offenders and requalification through shame and familial responsibility for the rest. Punishment had ritual effects on the offender. Modern punishment, in contrast, places the offender on a continuum of deviance from the social norm and seeks to move him toward that normal ideal. While the serious offender in the ancien regime was banished by exile or execution to a place that stood in thematic opposition to the order of the community, the modern strategy produces zones of concentration that are intensifications of the basic themes of order in the community.

Jeremy Bentham's plan for the prison "Panopticon" (Bentham 1962; Foucault 1977) is perhaps the most vivid exemplar of the modern strategy. It was designed to replace restraints on the body with an architecture of totalizing surveillance. By isolating the individual in a cell subject to the possibility of constant visibility, the Panopticon promised to permit the deviations of the offender (as well as the bad worker, lazy student and mad person) to be subjected to the maximum disciplinary pressure. Its design allowed for the almost instantaneous inspection of the entire prison so that the norms of the society could be enforced over the possibility of local abuses of power.

Postmodernization of Social Control

It is difficult (and perhaps in the end unimportant) to say whether the new social control represents an intensification

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Teaching Criminology with a Feminist Flourish

by Kathleen Daly

Little prepared me for teaching my first criminology class in spring of 1984 at Yale University. Except one graduate seminar in criminology theory, I had taken no other courses. My early criminology syllabi reflected all the problems of trying to "incorporate" gender into a masculinist field preoccupied with juvenile delinquency. At the end of the semester, several weeks were devoted to "special topics" such as violence against women and white-collar crime.

The schizophrenia in my teaching began to hit me during a faculty curriculum integration project in 1987 when we discussed methods of introducing feminist ideas in our classes. At the time I had been teaching an introductory-level sociology course, one on gender, and a seminar on women and work. I recall saying I enjoyed *not* bringing in feminist theory and research in my criminology class because it was easier to manage. It was one non-Women's Studies course in which I would not be trashed by some students for being "a feminist." I could just be a regular teacher, marked by gender but not by ideology.

Things began to change by the second half of the 1980s. A colleague and I wrote a review essay on feminism and criminology (Daly and Chesney-Lind 1988); the experience of writing the essay pushed me to reconsider my relationship to the field as a researcher and a teacher. The Division of Women and Crime, a section of the American Society of Criminology (ASC) was then growing in membership and activism. More recently, an issue of *Journal of Criminal Justice Education* (1992) was devoted to women and criminal justice curriculum. These developments, while encouraging, are just the beginning. The field of criminology – or deviance and social control more generally – will begin to change not simply when women are "in" it, but when its sexed and gendered foundations – theoretical, methodological, and political – are exposed and transformed.

In teaching criminology today, my aims are (1) to develop awareness of the political and ideological dimensions of criminology and crime control; (2) to examine crime and justice across three sites – intimate violence, street crime, and white-collar; and (3) to understand justice system processes and the moral dilemmas of punishment.

I begin with a "Crime and Justice Literacy Quiz," a 25-item "test" designed, I tell students, with the goal that they will fail. The quiz asks questions like:

- Every year we hear that the crime rate is increasing, decreasing or staying the same. What is "the crime rate"? Where does it come from?
- Persons arrested or prosecuted for crime have had their rights guaranteed under the U.S. Constitution for about a century. True or false?
- What is the legal definition of a larceny? a burglary? a robbery?

This quiz is a fun and engaging way to start the class. Students learn about the two measures of crime (the Uniform Crime Report [UCR] and National Crime Survey [NCS]), which groups are likely to be victimized by and arrested for crime, the legal and social meanings of crime and justice, etc. For the first assignment, a short paper, I ask students to skim the contents of the UCR and the NCS, describe the different images they give of crime, and propose a substantive change.

Two recent innovations in my criminology course are presenting material on four frameworks – conservative, liberal, radical, and feminist; and focusing on crime and justice across three sites – intimate violence, street crime, and white-collar crime. The frameworks help students to see what ideological position they are working from. Initially, most resist being "labeled" or do not know with which position they are aligned. For their second assignment, I ask them to do a review essay of one of two street crime books assigned. They are to identify their own ideological position as reviewer and that of the book's author, describe the book's methods and findings, and critique it with reference to other course readings. By taking a self-conscious and critical standpoint on a research text, they begin to see the assumptions they hold about crime, offenders, and the criminal justice system.

For the three crime sites, I begin with intimate violence. Among other readings, one on rape in fraternities sparks a lot of

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The Invisibility of Gender: A Student's Perspective

by Rebecca L. Kidder

What can a feminist perspective bring to criminological study? Its most important contribution is revealing the invisibility of gender in the field. Feminist criminology doesn't just add gender as a topic that deserves attention; it makes gender a crucial component in theorizing about crime.

I had taken courses on deviant behavior and law before, but I was not encouraged to think about whether crime affects men and women differently or why women commit less crime than men. In earlier courses, statistics were presented on gender differences in crime rates, but they were not explained. Women were invisible: students were never taught to question whether theory applied to women. Taking Professor Daly's class gave me the tools to understand gender, crime, and justice.

The absence of a feminist perspective is a great loss to students in criminology: people will continue making false assumptions about women, men and crime. The goal of criminology should be to replace commonsense assumptions with empirical research. To avoid the gender question is antithetical to scientific inquiry.

Rebecca L. Kidder is an undergraduate at the University of Michigan, majoring in sociology.

From Confinement

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of the most important elements of modernist strategy or a fundamental break (Bottoms 1983; Cohen 1985; Shearing and Stenning 1984). Surveillance, spatial design for control, the enforcement of norms as opposed to laws, all continue to play a critical role in the postmodern strategy. At the same time there is much that recalls the ancien regime; specifically, the tendency of postmodern control strategies to exclude and segregate.

The subject of punishment shifts from the individual to the category. Mechanisms for detecting deviance and apportioning punishment shift from investigations of individuals to statistical or actuarial screening of entire populations (Bottoms 1983; Mathiesen 1983; Cohen 1985; Reichman 1986; Feeley and Simon 1993). Examples include profiles for detecting drug couriers or tax fraud. The definition of dangerousness moves from the model of individual psychopathology to comparative risk derived statistically (Ewald 1986; Defert 1991).

The regulation of punishment shifts from society to subdivision. Modern punishment always has society as its referent. Postmodern strategies are far less general. Control is oriented not toward attaining a threshold of integration into society but to preserving order in specific locales (Shearing & Stenning 1987; Simon 1993). For example, more money is currently being spent on private police—those which patrol real estate subdivisions, office complexes and shopping centers—than for public police responsible to whole cities.

The objective of punishment shifts from normalization to prevention. While everyone theoretically belongs to (and is the responsibility of) society, the particularistic settings of postmodern social control have no commitment to, or responsibility for, everyone, or for conduct in general. It is cheaper and more effective to identify only those forms of deviance that are threatening to the specific functions of the location

Teaching Notes and Bibliography

Once made aware of how contingent our social control practices really are, students discover that they already know quite a bit. The trick is to help them rediscover how different things have been and could be. Whatever its empirical shortcomings, Foucault's *Discipline and Punish* (1977) remains the best possible way to shock students into realizing how weird and unnatural confinement is as a response to crime and disorder.

What you do next greatly depends on how much time and what level students you have. You can contrast Marxist, Post-Structuralist, and Cultural Studies with more traditional historiographic perspectives on the transition from ancien regime to modernity. Those with less time and younger students might consider adopting Garland's (1990) superb work on punishment and social theory as a text.

To begin exploring the shift to postmodernity, one might ask students whether Foucault's notion of discipline seems to explain all of contemporary society's responses to the threat of disorder. Shearing and Stenning's (1984) essay on Disney World will do a beautiful job of sparking discussion on this. Studying the present offers the opportunity to let students do their own fieldwork. One can assign them to observe activities at a local shopping center or supermarket and identify what features have control functions. Ask them if they see a difference between the people being controlled through these systematic but gentle forms and the people they see being handcuffed by police or behind bars on the evening news.

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and exclude them. In a sense punishment disappears altogether since it is more efficient to prevent crime or, if that fails, to identify criminals and exclude them permanently from the spaces being secured.

This shift has been facilitated by the development of a cluster of related methods and technologies. The most important is that of "defensible space" (Newman 1972). The space to be secured is designed in advance with security in mind so that the environmental factors necessary for crime – invisibility, easy escape routes, etc. – are unavailable. This may include "target hardening," a process by which environments are made more impervious to crime. A good example of this is the Washington D.C. metro system. Its stations are designed with no level surfaces on the walls, which makes graffiti writing nearly impossible.

Control is enhanced by "channeling" out those segments of the population that are more likely to pose risks than benefits to the space being controlled (Simon 1987). For example, many shopping centers are designed so as to be almost inapproachable on foot. Presumably, pedestrians are more likely to be thieves, beggars, or troublemakers than shoppers. Those potential offenders who do manage to get into the controlled spaces may be identified and segregated before they can cause problems through "stings," which manage crime by placing it in planned environments (Marx 1988).

Conclusion

The Panopticon (and the innumerable real prisons built over the last two hundred years) mobilized new capacities for hierarchy and domination in post-revolutionary societies committed to formal political liberty and equality. But it remained profoundly committed to the democratic ideal of a common public. By containing and transforming those unwilling or unable to live up to social norms defined by urban industrial society, confinement was intended to make the public space of unregulated exchange possible.

The new Panopticon is Disney World (Shearing and Stenning 1984) or the giant office/shopping complexes that have been built over the last two decades to replace downtowns. Those capable of obtaining discipline as a commodity from the private sector (Ewick 1993) are permitted access to the intensely regulated spaces where a privatized form of public life takes place– shopping centers, office complexes, planned communities. These spaces of limited access and defensive design depend on a variety of screening devices to ensure that the unreliable never enter in the first place, or are quickly excluded.

On the outside of these gleaming edifices, the public spaces of our post-industrial cities have become a dumping ground for the insane, the criminal, and most numerously, those too marginal to the economy to win passage inside. There, the traditional social control apparatus of public police and prisons is devoted to a kind of "waste management" strategy, where widespread violence is tolerated and confinement is dispensed commensurate to the threat of contamination to those on the inside of freedom.

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Teaching about Crime

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some forms of computer invention become legally proscribed and regulated? Or, as a final example, how can we explain the fact that before 1820 not one state prohibited abortion by statute, while after 1900 not one state permitted it?

By placing the study of law within a comparative historical context, the instructor can begin the course by disrupting the naturalness and inevitability of the existence and status of crime and the criminal offender. Students who come to criminology to study murder, rape, and mayhem are immediately confronted by the instability of the concept of crime and invited to examine how the category of crime, and any particular crime, is created, and how groups of persons are classified as criminals. Focusing on the creation of crime becomes an analysis of social structure and power in particular communities and states (e.g., the interests of a feudal aristocracy to keep wages low after the black deaths, or the interests of southern whites to maintain control over the labor of newly freed slaves).

Historicizing the question of what is crime, and initiating this broader inquiry into social structure and power requires more general concepts, theories, and methods. How can we describe the variable processes and situations that transform behavior into crime? How do we know about and measure criminal activity? What are the sources of the information we have? The ever growing and rich literature on criminal behavior invites a healthy comparison among the kinds of information and knowledge that are produced by alternative methods of inquiry and analysis (e.g., victim surveys, government statistics, biographies, community ethnographies). That comparison demands organizing terms (e.g., class, race, gender, power, social structure, ideology), as Kathy Daly illustrates starting on page 5. By questioning what is known about crime and how it is known, the instructor can turn a criminology class into an excursion in the sociology of knowledge.

If the invitation to criminology begins with contradictions, the excursion through criminology may similarly focus on contradictions explored through social theory. A central issue in social theory, the relationship between agency and structure, individual versus social causation, is also an orienting axis for the nearly two hundred years of sociological research and theory on crime. How can we explain the existence and distribution of crime? The available theories or explanations divide neatly among those that focus on the invention/creation of crime by law (conflict theories), and those that attempt to explain why actions which have been prohibited by law are distributed as they are in society (e.g., theories of differential association, social disorganization). Although the canon of criminological theory can be distinguished by these two foci, the canon displays a powerful consensus on the orienting issue: the causes of crime (in the definitions and the commission) are located in and explained by social/collective forces. In the sociological explanations for the causes and distribution of crime, structure is more determinative than agency. Ironically, as Jonathan Simon notes on page 4, the responses to crime until recently have been focused on the individual. In the political and social responses to crime, individualism trumps sociology.

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Criminology & Feminism
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discussion. For street crime, students read materials about men's and women's deviant activities. And for white-collar crime, overview and gender-specific articles are assigned. Gender is now in the frame every week, not a "specific topic." And as women and gender come into view, masculinity is problematized.

Each crime site makes a particular social relation more visible: gender and age for intimate violence, race for street crime, and class for white-collar. For theories of crime, I ask students to consider similarities and differences in how harms are explained. Should there be different theories for different sites? Or should one explanation hold across the sites? For justice system responses and theories of punishment, I ask whether victim-offender relations should matter; whether students are troubled by the different considerations federal judges give in sentencing white-collar and common crime defendants (Wheeler, Mann, and Sarat 1988 in a pre-guidelines study); and whether different theories of punishment ought to apply to different lawbreaking. When problems of justice are addressed across three sites, students become more uncertain about what the response to harms ought to be.

The students conduct systematic observations of criminal court processes for a third paper. I emphasize that this is a research, not journalism, assignment. They are to observe and collect information on cases, arrange their findings in tables, relate their findings to the relevant literature, and consider the implications for the character of justice. Other research projects I have assigned include comparing statutes in two states for marijuana or rape; and collecting and analyzing news stories about crime.

Research experiences like these encourage students to see problems of crime and justice in participatory, meaningful, and concrete terms. These experiences, together with knowledge of research and theory, can promote an informed and critical citizenry – without which problems of crime and justice will continue along a tragic, destructive, and punitive path.

Kathleen Daly is Visiting Associate Professor of Sociology at the University of Michigan, Ann Arbor, MI 48109.

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Course Materials:

Merry Morash gathered syllabi and other course-related information for the ASC Division of Women and Crime's *Curriculum Guide for Teaching Courses on Women and Crime* (1988). To purchase copies, contact the ASC Executive Office, 1314 Kinnear Road, Columbus, OH 43212, or call 614/292-9207.

A second edition of the *Curriculum Guide* will be published in 1994. For further information, contact Christine Rasche, University of North Florida, 4567 St. John's Bluff Road, Jacksonville, FL 32224-2645; or Lynne Goodstein, Women's Studies, Pennsylvania State University, 13 Sparks Bldg., University Park, PA 16802, 814/863-0356.

Contact Kathleen Daly for the "Crime and Justice Literacy Quiz" and answer key.

News

Amherst College. Recently established a Department of Law, Jurisprudence & Social Thought (LJST), after a three-year experimental program received favorable review. This department houses an autonomous undergraduate major, as well as the Amherst lectures and book series of the same name. The Amherst major "goes beyond the aggregation of traditional departmental courses that has been the typical approach to legal study in the liberal arts and advances a distinctive conception of the field. LJST courses treat law as a set of historically and culturally specific institutions and processes that *combine* moral argument, distinctive hermeneutic and rhetorical practices, and the social organization of regulation and violence." For further information about LJST, contact Thomas Kearns or Austin Sarat, Amherst College, Amherst, MA 01002.

Institute in Integrative Studies. The Institute provides an introduction to Miami University of Ohio's School of Interdisciplinary Studies, feedback on interdisciplinary syllabi, and a summer seminar on interdisciplinary curriculum development and pedagogy. Groups of ten participants will visit the Miami campus during Fall and Winter, 1993–94, and groups of twenty participants will return for a two-week summer seminar. Participants are expected to teach at their own institution an interdisciplinary course they develop through the Institute, as well as conduct faculty development workshops for their colleagues. For more information, call the Institute at 513/529-2213.

ABA Creates Section of Dispute Resolution. The American Bar Association voted at its midyear (February 1993) meeting to create a Section of Dispute Resolution. All dispute resolution lawyers, volunteers and professionals are invited to participate in the new section. For additional information about how to become a member, contact the ABA Section of Dispute Resolution, 1800 M Street, N.W., 2nd Flr., Washington, DC 20036 or call 202/331-2258.

Moot Court Exercises: A Critique and Alternative Approach

by Georgia Wralstad Ulmschneider

In the Spring 1991 issue of *Focus*, Tom Sweeney persuasively argued for the importance of actively engaging students in learning about the law. Inspired by his article, I hope to contribute further to the intellectual dialogue by discussing a role-playing exercise I utilize in my Constitutional Law and Judicial Process course.

Often in undergraduate courses on Constitutional Law and Judicial Process, as Sweeney noted, moot court competitions are used as role-playing exercises. Although the topics of the exercises vary a great deal, the structure of these exercises is usually quite similar. In these moot court simulations, students either volunteer or are assigned, as individuals or as groups, to argue cases before a panel of judges. The panel of judges is composed of legal professionals who act as the decision makers. Following the arguments and decisions in the cases, the instructor engages the entire class in a discussion of the courts' decisions, including their legal and policy ramifications.

While this type of moot court exercise is indeed a useful device for teaching students about certain substantive areas and procedural aspects of law, the importance of the attorney's role in the judicial process, the nature of legal reasoning, and the policy ramifications of court decision-making, I have found it wanting in two interrelated ways. First, I fear that this structural arrangement invites students, who are already predisposed toward this line of thought, to focus their attention on learning substantive law at the expense of learning about the law. This line of thought, in my view, is understandably encouraged by the types of questions asked and the character of the arguments elicited by the judges, who by training and profession, view law in substantive and mechanistic terms. Secondly, I find this structural arrangement is wanting because it offers students limited opportunity to explore how small group dynamics and judicial attitudes and values affect judicial decision-making. In limiting such opportunity, I fear that students, once again, are invited to view law primarily in substantive and mechanistic terms and, thus, they will focus less on its human dimensions.

To remedy these perceived difficulties with the traditional moot court exercise, I have devised an alternative one which could easily be adopted for use in appropriate course settings. My exercise revolves around mock Supreme Court reviews of hypothetical cases, typically concerning legal and policy issues in the areas of equality, freedom of expression, and rights of the accused. Some of my students, like their peers in a more traditionally structured moot court exercise, undertake the role of legal counsel and argue their cases before the moot Supreme Court. In conducting their research, however, these students are required to do more than find and analyze cases appropriate for their arguments. *They are also expected to research the backgrounds, personalities, and judicial philosophies of the Justices and develop an argumentation strategy that takes this information into account in order to maximize their chances of receiving a favorable ruling.* For instance, after researching the case, student counsel may conclude that the outcome is dependent on convincing one particular Justice of the results of her position. Having so concluded and using the information she has acquired, the student counsel is expected to frame her arguments in a manner that will be particularly persuasive to that Justice.

Students should be exposed not just to substantive law but also to law's human dimension.

The panel of Justices, in my exercise, does not consist of legal professionals. Instead, each remaining student in the class assumes the role of a particular Justice. In preparing for their roles, these students are required to research the background, personality, and judicial philosophy of Justice they have become. Moreover, with their extensive research in mind, these students are expected to question counsel, participate in the decision conference, and vote on the case as if they were that Justice. (The conference deliberations, unlike those of the actual Supreme Court, are held in public in full view of the class.) Finally, one of the student Justices will be assigned the task of delivering an oral majority opinion. The other Justices may choose to deliver their own concurring or dissenting opinions.

After the Court's announcements of its decisions, classroom discussion follows. At this time, students have the opportunity to ask their colleagues why, as counsel, they approached the cases as they did and why, as Justices, they decided as they did. Moreover, as a class we explore whether the majority opinions were negotiated texts and how small group dynamics may have affected outcomes. Finally, we look at the legal and policy ramifications of the Court's decisions.

The culmination of this exercise is a final paper consisting of two parts. For those students who have "become" a Justice, the first part of the paper is a profile of their Justice. Students not only examine the backgrounds, personalities, and judicial philosophies of their Justices but also discuss and analyze the implications of this information for the way the Justices behave on the bench. The second part of the paper allows these students to apply this preceding work. Using the information garnered about these Justices and taking into consideration the attorneys' arguments, these students discuss how their Justices would decide the cases presented and the reasons for their conclusion. For the students who undertake the role of legal counsel, their paper is differently structured. The first part of their paper consists of a researched brief of their case. In the second portion these students discuss and analyze the reasons for the argumentative strategy they used in presenting their side of the case. In their analyses, they must

explain how their approach to the case integrated their knowledge of the law with their knowledge about the Justices' backgrounds, personalities, and judicial philosophies.

In my view, this role-playing exercise both avoids many of the pitfalls that may be inherent in the traditional moot court structural arrangement and also allows students to experience, first-hand, more aspects of the judicial process at the appellate level. Students have many more opportunities to focus their attention on the *human side* of the law through their research, participation and written work. They are exposed to the conference stage of judicial decision-making and experience its importance. All these additional opportunities help to increase students' awareness that judicial decisions, like legislative or executive ones, are influenced by such factors as personal experiences and values as well as by the state of the law.

At the same time, the structure of this exercise helps to ensure that students understand that judicial decision-making differs from other forms of policy-making. It does so by introducing students to the specialized rules and traditions that both structure and constrain the judicial process. Moreover, this role-playing exercise allows for more flexibility in student participation. For some students the prospect of standing up and arguing before a "court" is such an intimidating one that they end up focusing on their performance rather than on learning. By allowing students also to act as "Justices," this role exercise hopefully eliminates the intimidating nature of a moot court simulation. Student counsel may feel less threatened by their peers asking questions than by legal professionals. Also, those students who still are intimidated by the prospect of acting as counsel may feel more comfortable "playing" a particular Justice seated among many and thus will be less inclined to focus primarily on the performance aspects of their work. Finally, this exercise upholds the liberal arts tradition in education. At every stage, students are encouraged to think critically, to communicate effectively, and to apply their knowledge and skills of analysis.

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The Law Forum

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and informal conversation begins, at lunch, and in dorm room "bull sessions." The problem is that these are not called "bull sessions" for nothing: discussions among students can become an enthusiastic exchange of misinformation. The Law Forum was a chance to bring reliable information to the informal discussions of daily news.

To organize the forums, I worked collaboratively with student members of OSU's Legal Studies Society, a club for pre-law students. In the absence of an analogous group, a professor might decide to assign students in law-related classes to organize law forums for students not in those classes.

How to Choose Topics. "In these astonishing times," I wrote in my grant proposal last year, "the only safe prediction about next year's stories is that many will raise fascinating and important law-related issues." And of course this turned out to be true, as it is every year. From all the hot stories, I tried to choose the juiciest and the meatiest: the stories that excited the most discussion among students and thus were most likely to be interesting to them, and the stories that raised the most significant law-related issues. In selecting topics, I relied heavily on students, listening to what students were talking about in the hallways, checking with students in my classes, and consulting with the students in the Legal Studies Society.

How to Draw Students. A necessary condition for education is, of course, students. And drawing students, we found, is a function of topic, place, and time as much as publicity. We decided that we would have the best participation if we took the forum to the students, rather than asking the students to come to the forum. So we held forums in places students were likely to be: in a dorm lounge, in meeting rooms in the student union, and in the union lounge, where we set up a microphone and chairs at the intersection of the main hallways. We selected times when we knew students would be around: at lunchtime in the union, early evening in the dorm, and twice on Saturday mornings when students were on campus with their parents for events scheduled during the day. Our best time turned out to be noon time in the union lounge.

We tried a variety of methods to publicize the forums. Newspaper ads were the least effective and the most expensive. The most effective was asking professors to announce the forums in targeted classes. In addition, we had good attendance when we piggybacked a forum onto other events. For example, we held a forum on rape trials immediately following a fashion show scheduled for Mom's Weekend. We also found that our attendance increased when we enlisted student groups as cosponsors and asked their help in publicizing the event to their members.

How to Find Guest Experts. The hardest part of organizing the forums was finding experts who were willing to come to campus on the short notice that was unavoidable, given that our whole purpose was to respond quickly to breaking news. Sometimes, after the tenth phone call, we began to think that some people automatically turn down last-minute invitations. At other times, we lost several days to voice-mail and answering services.

We believe that the only solution is to have an assortment of experts lined up in advance, "on call." This means brainstorming about what kinds of experts might be needed, studying what experts are available nearby, and contacting them early to explain the nature of the educational effort and to secure their agreement to participate, if and when the call came.

We found that the guest experts had a lot of fun with the students. Maybe because of the informal setting and procedure, maybe because of the enthusiasm of the students, the discussions were free-wheeling and far-reaching, a real pleasure.

How to Organize the Discussion. Forget it. If the topic is interesting enough, the students and experts will take it and run. In our forums, I introduced the guest experts, asked the first question, and then scarcely got in another word, which is exactly as it should have been. Forums are a time for student questions, and they know what they want to know.

The Law Forum is a small, simple idea. But its virtue is that it goes directly to the goal that I believe we professors ought to be pursuing: educating all students to be citizens—well-informed and responsible participants in the civic discourse.

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Courting Danger: Injury and Law in New York, 1870–1910
by Randolph E. Bergstrom
Ithaca: Cornell University Press, 1992.
213 pp., $32.95 (cloth).

Low Life: Lures and Snares of Old New York
by Luc Sante
New York: Vintage Books, 1992.
414 pp., $14.00 (paper).

Reviewed by Anthony Star

Randolph Bergstrom's *Courting Danger* and Luc Sante's *Low Life* are two books that capture slices of life in New York City during the late 19th and early 20th centuries. *Courting Danger* is a careful study of the rapid rise in personal-injury suits in the city during the period 1870 to 1910, while *Low Life* tells the stories of the underworld and criminals of New York. Two very different portraits of New York are painted by these two books. *Courting Danger* shows people's changing understanding of their relationship to society, and of the legal means of addressing wrongs done to them; *Low Life* examines people living for the most part outside of the law, coming into contact with it only as an adversarial – and often corrupt – institution. The divergent perspectives and methods of the two works show just how differently the same place and the same time can appear.

Between 1870 and 1910, the number of personal injury lawsuits filed in New York City each year grew from 13 to 595. *Courting Danger* focuses on resolving the mystery of this explosion in lawsuits. The events leading to the lawsuits ranged from work-place and construction accidents; to collapsing buildings and unsafe side walks; to traffic accidents, many involving the newly developed subways, streetcars and automobiles. The first chapter breaks down in detail the cases brought in the three sample years of 1870, 1890, and 1910. The book then examines the differences in the types of accidents that gave rise to the suits; the specifics of the laws regarding personal injury suits; the role of lawyers; the role of judges and juries; and finally, the influence of the parties bringing the actions. Each chapter concludes by failing to find the smoking gun that was responsible for the rise.

Bergstrom comes to the conclusion that, "[b]ecause legal behavior was changing for no apparent external environmental reason – no physical, social, or legal cause – logic suggests that the explanation lies internally, in the thinking of New Yorkers." He then goes on to argue that a variety of factors, including the expansion of the market economy and of moral reform movements, created a new sense of public responsibility that replaced individual responsibility, and inspired New Yorkers to turn to the courts. The increase in lawsuits was not caused by any factor in the legal system – in fact, many of those factors discouraged this change. Rather this shift in the public's expectations and relationship to the law provides empirical support for Lawrence Friedman's general proposition about changes in American legal culture in the early 20th century (see, e.g., *Total Justice*).

This new understanding of responsibility, and of the ways to use the legal system to address wrongs, was found only in the sectors of society that were able to turn to the courts in times of need. Clearly, that ability was not available to many New Yorkers. Luc Sante's *Low Life*, in part, tells some of those people's stories.

Low Life situates those people by describing the physical elements of the city, its geographic layout, its buildings and its streets and by describing how those elements concentrated the poor and the criminals into an area on the southern part of Manhattan known as the Bowery, where the scenes of the book largely take place. The Bowery was one of the city's theater districts, and the contrasts between the respectable theater of Broadway, and the low, but vibrant, theater of the Bowery, serves as one of the metaphors for the isolation and exclusion of the Bowery and its inhabitants. Besides seedy theaters, the book describes saloons and whorehouses; gangs and individual criminals; corrupt politicians and police who perpetuated vice and reformers who fought and sensationalized it. At times the listings of colorful characters and gangs, and the stories of their exploits, make the reader feel as if every criminal act, scam, and riot that took place in late 19th century New York has been carefully noted and retold in *Low Life*.

Sante draws many of his tales from a book called *The Gangs of New York* (1927) by Herbert Asbury, the "Police Gazette" newspaper, and many contemporary sensationalistic accounts. Sante rightfully criticizes many of the contemporary works for their lack of perspective, and for the ways in which they promoted the vices they claimed to be warning of (giving the addresses of whorehouses not only warns the offended, but informs the curious). But in the exuberant telling of his stories, one wonders if Sante himself has gotten a little carried away.

Unlike Bergstrom, who finds a developing sense of inclusion in the legal system and in American society, Sante concludes *Low Life* by describing night in New York, both then and now, "[N]ight is the corridor of history, not the history of famous people or great events, but that of the marginal, the ignored, the suppressed, the unacknowledged; the history of intoxication, of vainglory, of delusion, of dissipation, of delirium." Night is where the people of Sante's New York are trapped and forgotten. For each New Yorker remembered by Bergstrom as he or she sought compensation for an injury, countless others were born, lived, and died unnoticed by society.

Bergstrom's thoroughly-researched study of the records of personal injury lawsuits from three sample years enlarges our understanding of the state courts, and of how legal behavior developed in them. It presents to students a tangible history, supported by largely undisputed facts that can help them develop their own close readings of legal documents. Sante, on the other hand, deals with inherently dubious sources, and has to struggle with the limitations that creates. While *Low Life* is not an academic work, it is well-researched, and students will not only be drawn in by its richness, but also intrigued by the difficulty of studying the underworld from its own perspective, not that of the dominant society. As we become more aware of who has been left out of history, it is valuable to try to resurrect those people, both good and bad.

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Briefer Book Notes

What Johnny Shouldn't Read: Textbook Censorship in America
by Joan Delfattore
New Haven, CT: Yale University Press, 1992. 177 pp., $25.00 (cloth).

Joan Delfattore has written a compelling and important book about the struggles between parents and school officials, who are "locked in competition for the minds and souls of children" (p. 19). This is a particularly timely book, given national debates about the state of public schools and various reform measures. Somewhat unexpectedly, however, it is also a commentary on the pervasiveness of law in American society, because the educational and cultural conflicts described here result in lawsuits, court decisions, and the lobbying of administrative officials.

Delfattore examines conflicts in Tennessee, Alabama, Florida, and Louisiana. The debates in these (often rural) locales center on whether public schools are promoting "the religion of 'secular humanism'" through their use of particular readers and stories. Delfattore later extends her discussion to include gender and multiculturalism, particularly in the context of statewide adoption of texts.

But the conflicts in the southern states raise, in a metaphorical way, a set of issues that transcend the protests of Christian fundamentalists. Indeed, a tangle of issues surface, including the proper roles of parents, teachers, students, administrators, and school board members in curricular decisions: whether public schooling should take into account the values of different community members (and, if so, how); and whether education is at its best when it challenges or reflects the values of its students. More broadly, the book raises the recurring political question of majority values v. minority rights.

What Johnny Shouldn't Read is good reading for teachers, students, parents, and citizens alike. Relatively short and well-written, this book could be used as a case study in a variety of courses focusing upon law and society, education, politics, and public policy.

The Oxford Companion to the Supreme Court of the United States
by Kermit L. Hall (Editor in Chief)
New York: Oxford University Press, 1992. 954 pp., $45.00 (cloth).

This is an impressive, indeed authoritative, reference book that provides information about the Court, its Justices, institutional practices and doctrines, and the major issues that have confronted the Court over time.

Among the highlights are a thirty-page history of the Court, which contains period essays on the establishment of the Union, Reconstruction, the rise of legal liberalism, and rights consciousness in modern society. There are also topical essays on constitutional interpretation, federalism, privacy, gender, race and racism, Native Americans, religion, property rights, and labor, among others. More than 400 case entries are included, as well as definitions of key phrases and terms.

The organization of the book is clear and straightforward: entries are arranged alphabetically, and there is an extensive system of cross-referencing and indexes. The entries themselves are written in a clear and succinct style; only a few citations are typically attached.

In sum, the editors have produced an excellent volume that can be used by many audiences. College faculty, particularly those who are not experts in constitutional law, should find *The Oxford Companion* an invaluable, and frequently-consulted, reference guide when teaching about the Supreme Court and its doctrines. JPR

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Teaching about Law in the Undergraduate Curriculum: The Contribution of Political Science. [published in the APSA's Law, Courts and Judicial Process Section Newsletter, Summer, 1985, pp. 1-5]. No charge.

Law, Liberal Education and the Undergraduate Curriculum. [published in Legal Studies Forum, Vol. 10, No. 1, 1986]. No charge.

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